

CHAPTER NO. 672

HOUSE BILL NO. 2719

By Representative Bone

Substituted for: Senate Bill No. 2665

By Senators McLeary, Burks, Cooper

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 56, relative to financing involving rail authorities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-56-203(i), is amended by deleting the subsection in its entirety and by substituting instead the following:

(i) All members of the board of directors shall serve without compensation except by specific authorization by the board, upon vote by two-thirds (2/3) of the board, however, the members may receive any per diem allowance which may be appropriated by the governing body of the county or city electing a director, for such director. Reasonable expenses incurred by members of the board while engaged in the business of the authority are subject to reimbursement by the authority. The board of directors may set reasonable compensation for officers of the authority consistent with their respective responsibilities, which may take into consideration such officer's responsibilities relating to financing of projects and facilities of the authority in addition to other responsibilities.

SECTION 2. Tennessee Code Annotated, Section 7-56-205, is amended by inserting the following language immediately after the words "such duties and powers" appearing in the introductory clause:

, except as otherwise specifically authorized herein,

SECTION 3. Tennessee Code Annotated, Section 7-56-205, is further amended by deleting item (3) and by substituting instead the following:

(3) Accept grants, loans or other financial assistance from the state, any county or municipality and any federal, state, county or municipal agency or authority, or other aid for the operation, acquisition or improvement of the properties and facilities of the authority;

SECTION 4. Tennessee Code Annotated Section 7-56-205, is further amended by deleting item (6) and by substituting instead the following:

(6) Notwithstanding the provisions of any law to the contrary, the directors may make contracts and execute instruments containing such covenants, terms, and conditions as, in the judgment of the directors, may be necessary, proper or advisable for the purpose of issuing bonds and notes, and entering into leases and lease-purchase agreement, for or in aid of the acquisition or improvement of the authority property and facilities; and may make all other contracts and execute all other contracts and execute all other instruments including without limitation, licenses, long or short term leases, lease-purchase agreements, bonds, notes, reimbursement agreements,

mortgages and deeds of trust and other agreements relating to property and facilities under its jurisdiction, and involving the financing, construction, operation, maintenance, repair and improvement thereof, or the acquisition of property for railroad purposes, as in the judgment of the board of directors may be necessary, proper, or advisable for the furtherance of the authority business and in the full exercise of the powers herein granted; and the directors are authorized to carry out and perform the covenants, terms, and conditions of all such contracts or instruments.

SECTION 5. Tennessee Code Annotated Section 7-56-205, is further amended by deleting the word "and" at the end of item (10); by deleting the period "." at the end of item (11); and by adding the following new items:

(12) Notwithstanding the provisions of any law to the contrary, acquire, hold, own and dispose of property, real and personal, tangible and intangible, or interests therein, in its own name, subject to mortgages, deeds of trust, or other liens or otherwise and to pay therefor in cash or on credit through installment payments, and to secure the payment of all or any part of any installment obligations in connection with any acquisition with property, tangible or intangible or revenues of the authority in accordance with the provisions set forth herein and without regard to the statutes, regulations and procedures to which counties must generally adhere;

(13) Notwithstanding the provisions of any law to the contrary, contract debts, borrow money, issue bonds, notes and other evidences of indebtedness, and enter into lease-purchase agreements to acquire, construct, improve, furnish, equip, extend, operate or maintain the properties and facilities described in § 7-56-201, or any part thereof, or to provide the authority's share of the funding for any joint undertaking or project, and to assume and agree to pay any indebtedness incurred for any of the foregoing purposes in accordance with the provisions set forth herein and without regard to the statutes, regulations and procedures to which counties must generally adhere; and

(14) Notwithstanding the provisions of any law to the contrary, enter into joint ventures and cooperative arrangements with one or more natural persons, firm, association, corporation, other governmental agencies, limited liability company, business trust or partnership, including the formation of a partnership, limited liability company or not-for-profit corporation to accomplish any of the purposes set forth herein or to exercise any of the powers set forth herein without regard to the statutes, regulations and procedures to which counties must generally adhere.

SECTION 6. Tennessee Code Annotated, Section 7-56-208, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The authority shall have power and is authorized to issue its bonds and notes and to enter into lease-purchase agreements and loan agreements for the construction, acquisition, reconstruction, improvement, betterment or extension of any of the properties and facilities described in § 7-56-201 or to assume and agree to pay any indebtedness incurred for any of the foregoing purposes and to enter into interest rate floor or ceilings or both with respect to such bonds, notes, lease-purchase agreements and loan agreements. The proceeds of the sale of such bonds, notes, lease-purchase agreements and loan agreements may be applied to:

(1) Payment of the costs of such construction, acquisition, reconstruction, improvement, betterment or extension;

(2) Payment of the costs associated with any such construction, acquisition, reconstruction, improvement, betterment or extension, including engineering, architectural, inspection, legal and accounting expenses;

(3) Payment of the costs of issuance of such bonds, notes, lease-purchase agreements and loan agreements, including underwriter's discount, financial advisory fee, preparation of the definitive instruments, preparation of all public offering and marketing materials, advertising, liquidity, remarketing, credit enhancement, and legal, accounting, fiscal and other similar expenses;

(4) Payment of interest during the period of construction and for six months thereafter on any money borrowed or estimated to be borrowed;

(5) Reimbursement of the authority for moneys previously spent by the authority for any of the foregoing purposes;

(6) Payment of fees, including termination fees associated with interest rate floors and ceilings;

(7) Establishment of reasonable reserves for the payment of debt service on such bonds, notes, lease-purchase agreements and loan agreements, or for repair and replacement to the property and facilities of the authority for whose benefit the financing is being undertaken, or for such other purposes as the board of directors shall deem necessary and proper in connection with the issuance of said bonds, notes, lease-purchase agreements and loan agreements and operation of the facilities and properties for whose benefit the financing is being undertaken;

(8) Contribution of the authority's share of the funding for any joint undertaking for the purposes hereinabove set forth; and

(9) Contribution by the authority to any subsidiary or separate entity controlled by the authority for the purposes hereinabove set forth

(b) The authority shall have the power and is hereby authorized to issue its bonds and notes and to enter into lease-purchase agreements or loan agreements to refund and refinance any outstanding bonds, notes, lease-purchase agreements and loan agreements of the authority heretofore or hereafter issued or lawfully assumed by the authority and to enter into interest rate floor or ceilings or both with respect to such bonds, notes, lease-purchase agreements and loan agreements. The proceeds of the sale of the refunding bonds, notes, lease-purchase agreements or loan agreements may be applied to:

(1) Payment of the principal amount of the bonds, notes, lease-purchase agreements or loan agreements being refunded and refinanced;

(2) Payment of the redemption premium thereon, if any;

(3) Payment of unpaid interest on the bonds, notes, lease-purchase agreements or loan agreements being refunded, including interest in arrears, for the payment of which sufficient funds are not available, to the date of delivery or exchange of the refunding bonds, notes, lease-purchase agreements or loan agreements;

(4) Payment of interest on the bonds, notes, lease-purchase agreements or loan agreements being refunded and refinanced from the date of delivery of the refunding bonds, notes, lease-purchase agreements or loan agreements to maturity or to and including the first or any subsequent available redemption date or dates on which the bonds, notes, lease-purchase agreements or loan agreements being refunded may be called for redemption;

(5) Payment of the costs of issuance of the refunding bonds, notes, lease-purchase agreements or loan agreements, including underwriter's discount, financial advisory fee, preparation of the definitive instruments, preparation of all public offering and marketing materials, advertising, credit enhancement, liquidity, remarketing, and legal, accounting, fiscal and other similar expenses, and the costs of refunding the outstanding bonds, notes, lease-purchase agreements or loan agreements, including the costs of establishing an escrow for the retirement of the outstanding bonds, notes, lease-purchase agreements or loan agreements, trustee and escrow agent fees in connection with said escrow, and accounting, legal and other professional fees in connection therewith;

(6) Payment of fees, including termination fees associated with interest rate floors and ceilings; and

(7) Establishment of reasonable reserves for the payment of debt service on the refunding bonds, notes, lease-purchase agreements or loan agreements, or for repair, improvement and replacement to the properties or facilities of the authority for whose benefit the financing is being undertaken, or for such other purposes as shall be deemed necessary and proper in connection with the issuance of the refunding bonds, notes, lease-purchase agreements or loan agreements and operation of the properties and facilities for whose benefit the financing is being undertaken. Refunding bonds, notes, lease-purchase agreements or loan agreements may be issued to refinance and refund any issue and more than one issue of outstanding bonds, notes, lease-purchase agreements or loan agreements, notwithstanding that such outstanding bonds, notes, lease-purchase agreements or loan agreements may have been issued at different times and regardless of whether the prior issue was a bond, note, lease-purchase agreement or loan agreement. The principal proceeds from the sale of refunding bonds, notes, lease-purchase agreements or loan agreements may be applied either to the immediate payment and retirement of the bonds, notes, lease-purchase agreements or loan agreements being refunded or, to the extent not required for the immediate payment of the bonds, notes, lease-purchase agreements or loan agreements being refunded, to the deposit in escrow with a bank or trust company to provide for the payment and retirement at a later date of the bonds, notes, lease-purchase agreements or loan agreements being refunded.

(c) The Authority shall have the power and is hereby authorized to issue revenue anticipation notes in anticipation of the collection of revenues from the properties and facilities described in § 7-56-201 and issue negotiable notes to evidence such borrowing, the proceeds from the sale of such notes to be used for the purpose of paying the cost of construction of addition, betterments and improvements to and extensions of the properties and facilities. The revenues, including rates, fees and charges for the services, facilities and commodities of the authority, and grants, loans and other assistance received from the state, any county and municipality and any federal, state, county or municipal agency, may be, together with a mortgage or deed of trust on the property financed, pledged to the payment of such notes. Such notes shall be sold in such manner and upon such terms and conditions as may be determined by the board of directors. The governing body may issue bonds for the funding of such notes.

(d) No bonds, notes, lease-purchase agreements or loan agreements, including instruments to refund or refinance the foregoing, shall be issued or assumed hereunder unless authorized to be issued or assumed by resolution of the board of directors, which resolution may be adopted at the same meeting at which it is introduced by a majority of all members thereof then in office, and shall take effect immediately upon adoption. Bonds, notes, lease-purchase agreements and loan agreements authorized to be issued hereunder, including instruments to refund or refinance the foregoing, may be issued in one or more series, may bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at such rate or rates (which may vary from time to time), payable at such time or times, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Said bonds, notes, lease-purchase agreements and loan agreements, including instruments to refund or finance the foregoing, may be issued for money or property at competitive or negotiated sale for such price or prices as the board of directors shall determine. Pending the preparation or execution of definitive bonds or notes, interim receipts or certificates or temporary bonds may be delivered to the purchaser or purchasers of said bonds or notes.

(e) Said bonds, notes, lease-purchase agreements and loan agreements, including instruments to refund or refinance the foregoing, may be repurchased by the Authority out of any available funds at a price not to exceed the principal amount thereof and accrued interest, and if so repurchased shall be canceled or held as an investment of the authority as the board of directors may determine.

(f) When entering into any contracts or agreements facilitating the issuance and sale of bonds, notes, lease-purchase agreements or loan agreements, including instruments to refund or refinance the foregoing, and contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, agreements establishing interest rate floors or ceilings or both, evidencing a transaction bearing a reasonable relationship to this State and also to another state or nation, the Authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this State or the laws of such other state or nation; provided, that jurisdiction over the Authority shall lie solely in a court of Tennessee which would otherwise have jurisdiction of actions brought in contract against the authority.

(g) No owner or owners of any bonds, notes, lease-purchase agreements and loan agreements issued hereunder, including instruments to refund or refinance the foregoing, shall ever have the right to compel any exercise of the taxing powers of the State or any municipality, county or other political subdivision of the State to pay said bonds, notes, lease-purchase agreements and loan agreements or the interest thereon. Each bond, note, lease-purchase agreement and loan agreement issued under this act by the authority shall recite in substance that said bond, note, lease-purchase agreement and loan agreement, including the interest thereon, is payable solely from the revenues pledged to the payment thereof, and that said bond, note, lease-purchase agreement and loan agreement does not constitute a debt of the State, any municipality, county or other political subdivision therein.

(h) Bonds, notes, lease-purchase agreements and loan agreements issued hereunder, including instruments to refund or refinance the foregoing, bearing the signature of the chair in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers. The validity of said bonds, notes, lease-purchase agreements and loan agreements shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement of the facilities or properties for which said bonds, notes, lease-purchase agreements and loan agreements are issued. The resolution or resolutions authorizing said bonds, notes, lease-purchase agreements and loan agreements may provide that the bonds, notes, lease-purchase agreements and loan agreements shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

(i) In connection with the issuance of bonds, notes, lease-purchase agreements and loan agreements, including instruments to refund or refinance the foregoing, and in order to secure the payment of the foregoing and other contracts entered into relating to the foregoing, the Authority shall have power to:

(1) Secure and covenant, as set forth in § 9-21-306, and § 7-34-110, as such provisions shall from time to time be amended (excluding provisions relating solely to water, sewer and parking systems);

(2) Pledge all or any part of its revenues, fees, rates, rentals, tolls, and charges it receives for the services of the facilities and from any grants, loans and other assistance received from the state, any county or municipality, and any state, federal, county or municipal agency;

(3) Pledge all or any part of its property, real or personal, tangible or intangible, including granting mortgages and entering into deeds of trust, on connection therewith;

(4) Vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to its bonds, notes, lease-purchase agreements and loan agreements, to provide for the powers and duties of such trustee or trustees, to limit the liabilities thereof, and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any amount or proportion of them may enforce any such covenant; and

(5) Make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or which, in the absolute discretion of the board of directors, tend to make the bonds, notes, lease-purchase agreements and loan agreements more marketable notwithstanding that such covenants, acts and things may restrict or interfere with the exercise of the powers herein granted; it being the intention hereof to give the authority power to do all things in the issuance of such instruments, and for their security, that a private business corporation can do under the general laws of the state.

(j) In addition to all other rights and all other remedies, any holders of bonds, notes, lease-purchase agreements and loan agreements, including instruments to refund or refinance the foregoing, including a trustee for bondholders or noteholders, shall have the right, by

(1) Mandamus or other suit, action or proceeding at law or in equity, to enforce his rights against the authority and the board of the authority, including the right to require the authority and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, to take all actions permitted under any deed of trust related to the instruments, and to require the authority and such board to carry out any other covenants and agreements with such bondholders and to perform its and their duties under this act;

(2) Action or suit in equity to enjoin any acts or things which may be unlawful or a violation of the rights of such holder or holders of bonds, notes, lease-purchase agreements and loan agreements;

(3) Suit, action or proceeding in a court in the State having jurisdiction over the authority to obtain an appointment of a receiver of any system or systems of the authority or any part or parts thereof. If such receiver be appointed, such receiver may enter and take possession of such system or systems or part or parts thereof and operate and maintain same, and collect and receive all fees, rents, tolls or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall dispose of such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct; and

(4) Suit, action or proceeding in a court in the State having jurisdiction over the Authority to require the board of the authority to account as if it were the trustee of an express trust.

(k) The authority shall, however, prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities made available by it, and shall revise such rates, fees or charges from time to time whenever necessary so that facilities and properties authorized herein shall be and always remain self-supporting. The rates, fees, or charges shall be such as will produce revenue at least sufficient to:

(1) Provide for the payment of all expenses of operation and maintenance of such facilities and properties;

(2) Pay when due principal of and interest on all bonds, notes, lease-purchase agreements and loan agreements, including instruments

of the authority issued to refund or refinance the foregoing, payable from the revenues of such facilities and properties;

(3) Pay any other contracts and agreements of the authority;
and

(4) Establish proper reserves.

(l) Any pledge of, or lien on, revenues, fees, rents, tolls, governmental grants, loans and other assistance, or other charges received or receivable by the authority to secure the payment of any bonds, notes, lease-purchase agreements or loan agreements of the authority, and the interest thereon, shall be valid and binding from the time that the pledge or lien is created or granted and shall inure to the benefit of the owner or owners of any such bonds, notes, lease-purchase agreements and loan agreements until the payment in full of the principal thereof and premium and interest thereon. The priority of any pledge or lien with respect to competing pledges or liens shall be determined by the date such pledge or lien is created or granted; provided, the proceedings authorizing any issue of bonds, notes or delivery of lease-purchase agreements or loan agreements may provide for the issuance of additional obligations on a parity of lien therewith. Neither the resolution nor any other instrument granting, creating, or giving notice of the pledge or lien need be filed or recorded to preserve or protect the validity or priority of such pledge or lien.

(m) Any bonds, notes, lease-purchase agreements and loan agreements issued by the authority pursuant to the provisions hereof, and the income therefrom, shall be exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes, and except as otherwise provided by the general laws of the State.

(n) All funds of the authority shall be invested in accordance with the requirements for investments for cities and counties, including proceeds of bonds, notes, lease-purchase agreements and loan agreements and refunding bonds, notes, lease-purchase agreements and loan agreements.

(o) The state, any county or municipality and any federal, state, county or municipal agency or authority is hereby authorized to agree to subordinate any interests it may have for repayment of funds received from any such grants and loans, including repayment of funds received from the state department of transportation, referenced in § 7-56-205(11), to the repayment of bonds, notes, lease-purchase agreements or loan agreements of the authority authorized herein.

(p) Any county or municipality participating in an authority is authorized to issue its bonds or notes for the purposes herein authorized pursuant to the provisions of Title 9, Chapter 21, and to grant or loan the proceeds of such bonds or notes to the authority. The authority is hereby authorized to enter into a loan agreement with or issue its bond or note to any city and/or county for the purpose of receiving and/or repaying such grants and/or loans in accordance with the provisions of this section. Such county or municipality is hereby authorized to pledge its full faith and credit and unlimited ad valorem taxing power to the repayment of such bonds and notes. Such county or municipality is further authorized to pledge any payments it receives from the authority under such loan agreement to the repayment of such city or county's bonds or notes.

(q) The provisions of § 9-16-108, shall apply for the purpose of issuing funding bonds.

(r) The provisions of Title 9, Chapter 19, shall apply to the registration and execution of registered bonds and notes of the authority.

(s) The authority may borrow money and create security interests only if approved in writing by the commissioner of transportation after the department receives assurances satisfactory to the commissioner that the authority's ability to fulfill its obligations to the state shall not be impaired.

SECTION 7. Tennessee Code Annotated, Section 7-56-210, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The revenues derived from the operation of the properties and facilities authorized, and the proceeds derived from the sale, transfer, lease or other disposition of any land or other facilities, shall be applied and used as provided in this section. All revenues shall be received, deposited and accounted for and all financial transactions shall be handled consistent with the requirements of statutes, regulations and procedures affecting county government.

(b) Revenues and proceeds shall be applied as follows:

(1) The payment of all operating and maintenance expenses of the authority, except that the proceeds derived from the sale, transfer, or other disposition of any land or other facilities shall not be used for operations of the authority;

(2) Payment when due of all bonds, notes, loan agreements, lease-purchase agreements and related contracts to the foregoing for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reasonable reserves therefor;

(3) Payment of all other contracts and agreements of the authority; and

(4) Any revenue or proceeds remaining after all the above items have been provided for shall be held and used for the further development of and for additions to the authority's facilities and for the acquisition or construction of new facilities which may become necessary or desirable to further the purposes of this part. None of such revenue shall go into the general funds of the participating counties, except as may be directed by the directors of the authority.

SECTION 8. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: April 29, 2004



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of May 2004



PHIL BREDESEN, GOVERNOR